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FM AMEMBASSY JAKARTA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 7574  
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY  
RUEHBJ/AMEMBASSY BEIJING 4623  
RUEHBY/AMEMBASSY CANBERRA 1848  
RUEHPB/AMEMBASSY PORT MORESBY 3616  
RUEHKO/AMEMBASSY TOKYO 1387  
RUEHWL/AMEMBASSY WELLINGTON 2221  
RHHJJPI/USPACOM HONOLULU HI  
RUEAIIA/CIA WASHDC  
RHEHNSC/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 000036

SIPDIS

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DEPT FOR EAP, EAP/MTS, EAP/MLS, INR/EAP (ZENZIE)  
NSC FOR E.PHU

E.O. 12958: DECL: 01/17/2018

TAGS: [PGOV](#) [KJUS](#) [ID](#)

SUBJECT: UNCERTAINTY OVER FUTURE CONSTITUTIONAL COURT  
VACANCIES

REF: A. 07 JAKARTA 3069

[1](#)B. 07 JAKARTA 3484

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Classified By: A/Pol/C Daniel Turnbull, reasons 1.4(b+d).

[1](#)1. (C) SUMMARY: With rumors still swirling about the possible appointment of a former state secretary to the Constitutional Court, the Yudhoyono administration must also decide how it will handle upcoming vacancies on the Court. Three justices will reach mandatory retirement age in mid-2008, threatening to halt Court operations and potentially delaying important decisions on disputed local elections and challenges to constitutionally guaranteed freedoms. Chief Justice Jimly Asshiddiqie has requested President Yudhoyono act to ensure that the Court can remain in operation. END SUMMARY.

COURT NEARING END OF FIRST TERM

[1](#)2. (C) The three-year appointment of Indonesia's nine Constitutional Court justices will end in August 2008, completing the first term of the prominent new court, established in 2002 as part of pro-democracy constitutional reforms. The next set of justices will be appointed to the Court by President Yudhoyono, the national legislature and the Supreme Court, each selecting three justices. For the remainder of its current term and its subsequent 2008-2011 term, the Court is expected to play a crucial role in hammering out fundamental issues concerning the constitutional rights of Indonesian citizens, including those related to counterterrorism laws and human rights guarantees, and in settling disputes between political parties contesting local and national elections.

RETIREMENTS LOOMING

[1](#)3. (C) Constitutional Court Chief Justice Jimly Asshiddiqie--a reformer (ref a) who was recently named GlobeAsia magazine's Man of the Year for 2007--last week highlighted that mandatory retirements from the Court before August could jeopardize its ability to continue functioning. Three justices will reach the legal retirement age of 67 before their terms end in August. Although the Court can

continue to operate with seven justices, the third retirement--of Justice Soedarsono (one name only) on June 5--will push the Court below the legal quorum requirements.

#### BRIDGING THE GAP AND PICKING NEW JUSTICES

¶4. (C) Asshiddiqie has requested that President Yudhoyono issue a presidential decree in lieu of law (PERPU) to extend the terms of the three justices past their mandatory retirement ages. He has also requested that the President, legislature and Supreme Court begin the process of identifying new candidates so that the Court can continue its work without interruption after August 2008. Asshiddiqie and other legal observers have responded negatively to the rumored possibility of President Yudhoyono's appointing former State Secretary Yusril Mahendra to the Court, saying that Court should maintain its nonpartisan stance, especially given its role in settling election disputes (ref b). Mahendra is a founding member of the Islamist Crescent Moon and Star (PBB) Party.

#### PROCESS UNCLEAR

¶5. (C) Asshiddiqie's suggestion that the retiring justices' terms be extended through August 2008 by way of a presidential decree would be a pragmatic but legally problematic solution. Since the Constitution requires the President, legislature and Supreme Court to appoint justices separately, it is unclear whether Yudhoyono has the legal authority to extend unilaterally the terms of the retiring justices. That said, pragmatic rulings have been a staple of the Court, which might have to rule on the constitutionality of the move. Presidential extensions beyond mandatory retirement age would be consistent with extensions routinely given to senior leaders in the military and police forces. Another option would be for the president to appoint temporary replacements. If there is no agreement on

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extending the terms of the retiring justices or appointing interim justices, the Constitutional Court appears headed for a recess of at least ten weeks during mid-2008, until a new panel of justices is seated.

HUME